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1970. Consequently, William was not a permanent resident of the alleged Village on April 1, 1970, nor did he live there for a period of time in 1970.

18. John (a.k.a. Johnny) Maliknak (res: 1960's & 1970)

He is the son of Angeline and Stephan Maliknak and has lived on Woody Island his entire life. His residences included the Frump house at Site 7 on Woody Island. He is enrolled to Woody Island. (Exs. S-6O, pp. 8-15; BIA-2B, p. 25).

There is no dispute that his permanent residence throughout his lifetime, including on April 1, 1970, was in the area claimed to be the village of Woody Island. Nor is there any dispute that he lived in that area for a period of time in 1970. Protestant does dispute whether that area actually qualified as a "Native village" in 1970.

19. William Wilfred Pavloff (dec'd: 1967; res: 1960's)

He was the son of Angeline and William N. Pavloff. With the exception of 6 years which he spent in the military, he lived on Woody Island from birth until his death by drowning in 1967. (Tr. 178, 218, 956; Ex. L-DOC-176).

His permanent residence was the alleged Village from birth until death. By reason of his death in 1967, he was not a permanent resident of the alleged Village in 1970 and did not live there for a period of time in 1970.

20. Agnes Pavloff Frump (dec'd: 1963; res: 1960's)

21. Robert Stretcher

22. Virginia Frump Griffin

23. Mary Anne King (res: 1960's)

24. Harold King (res: 1960's)

25. Brenda Pajurkin aka Frump (res: 1960's)

Agnes was the daughter of Angeline and William N. Pavloff and a lifelong resident of Woody Island until her death by drowning in 1963. At the time of her death she was in the process of moving to Uganik.

She had five children: Robert, Virginia, Maryanne, Harold, and Brenda. Robert, Virginia, and Maryanne were born before 1950, Harold was born in 1950, and Brenda was born in 1955. Only Harold is enrolled to Woody Island. Neither Mr. Feichtinger nor Koniag lists any of them as residents of Woody Island on April 1, 1970.

When infants/toddlers, both Robert and Virginia were adopted out of the family and raised outside the Kodiak area. The details of Robert's adoption are not known. Virginia was adopted by a non-Native couple, Lucille and Walt Westman. They lived on Woody Island from 1946 to 1951 while Walt was employed by the FAA. They left the island immediately

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after adopting Ginny.

Agnes and the three remaining children lived in the Frump home at Site 7 on Woody Island. Maryanne was a close friend of Trisha Chaffin, daughter of Yule Chaffin.

In the fall of 1960 the three remaining children were placed in the Kodiak Baptist Mission, where they lived and received their education during the school year. Each summer until their mother died, they returned to Woody Island to live. Harold also commercially fished during those summers.

Near the time of Agnes' death, Brenda went to live with, but was not adopted by, the Miller family in Seward. Harold and Maryanne were adopted by, and went to live with, the King family in Seward shortly after Agnes' death. All of them were then raised in Seward. Neither the Millers nor the Kings had any ties to Woody Island.

Until he moved with his adoptive family to Idaho in 1969, Harold spent "a lot of time" "visiting" his uncles, Johnny Maliknak and Nicholas Pavloff, on Woody Island. Maryanne and Brenda may also have visited Woody Island. Harold did not return to Woody Island thereafter until a brief visit in the early 1990's, at which time he spoke of trying to move back to Woody Island. In the 1990's the siblings reunited and planned to visit Woody Island. (Exs. L-DOC-79, -96, -108, -122, -146, -346; Tr. 180, 509-11, 954, 1578-79, 1796-1814).

None of them were permanent residents of the alleged Village on April 1, 1970. Nor did any of them live for a period of time in the alleged Village in 1970.

26. Michle Pavloff

He is the grandson of Nicholai W. Pavloff and the son of Peter Pavloff. He was born in 1930 on Woody Island. His parents died within a year of his birth so he was placed in the Baptist Mission orphanage on Woody Island. Little is known of his activities thereafter.

He married Margie Tarver and they had four children, Mary Anna, Peter Nicholas, Tanya Alexandra, and William Everett, born in 1962, 1964, 1969, and 1971, respectively. Michle and the children are enrolled to Woody Island.

The children were all born in California and the Family List shows that they all listed San Francisco, California, as the place where they resided for the two years ending April 1, 1970. Michle's wife never visited Woody Island. Mary and Peter visited Woody Island for the first time in 1979, when Michle took them there to show them around. Nevertheless, the Family List identifies Woody Island as the place of permanent residence on April 1, 1970, for Michle and his children.

The Feichtinger Report does not list Michle or his children as 1960's residents or 1970 residents of Woody Island. Nor does Koniak identify Michle and his children as permanent

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residents in 1970. There is no sworn statement or testimony from any of them in the record. Mary stated in an unsworn interview that her father expressed a desire to return to Woody Island but did not do so because of the high cost of living and the lack of employment opportunities. (Exs. L-DOC-128; BIA-2B, pp. 126-25; BIA-2A, p. 125)

Michle and his children clearly were not permanent residents of the alleged Village on April 1, 1970, nor did they live there for a period of time in 1970.

THE FADAOFF FAMILY: The Fadaoff family traces back to Nicholas Fadeef (Fadaoff) and Fekla (Ella) Balamutoff/Kornilov, who were both placed in the Baptist Mission orphanage on Woody Island near the turn of the century. Nicholas became the chief of the alleged Village after his adoptive parent and first chief, Adrian Nanjack, died in the flu epidemic of 1918. Ella and Nicholas married and lived in the Chabitnoy house on Woody Island.

27. Fekla "Ella" Balamutoff Kornilov Fadaoff Chabitnoy (dec'd: 1971; res: 1960's)

Shortly after her first husband, Nicholas Fadaoff, died in 1935, she married Mike Chabitnoy, another Mission-raised person. He died in 1958. Ella died in December 1971.

In March of 1964 Ella received a patent to the land encompassing the Chabitnoy, Simeonoff, and Harmon houses (U.S. Survey 3630). In May 1971, shortly before her death, she sold the land to a non-Native couple, Fred and Ruth Brechan, for \$2,500.

She is not enrolled to Woody Island. The Feichtinger Report lists her as a 1960's resident of Woody Island but not as a 1970 resident. Nor does Koniag list her as a permanent resident in 1970.

She lived on Woody Island from approximately 1895 until she moved to Kodiak in the early 1960's prior to the 1964 earthquake. She moved to have better access to medical services because of her failing health and to be near her son Cecil Chabitnoy who acquired a job at the Naval base outside of Kodiak.

Thereafter, she lived for periods of time in the summertime on Woody Island in the South Village until she grew too old to do so. Also, the island became too lonely for her, as her loved ones died or left the island: her husband and one of her sons, Edison Fadaoff, Sr., died in 1958 and her other four sons left during the early 1960's.

Ella's granddaughter, Christina Hoen, testified that Ella told her in 1969 that she did not want to live on Woody Island again because of her memories of her son, James Fadaoff, who committed suicide that year while imprisoned for killing his common law wife, Rosemary Chilliak. Christina hypothesized that her grandmother's primary reason for selling her land to non-Natives in 1971 was her son's suicide and possibly one other death in the family (a possible reference to the death of Ella's grandson Danny Harmon in 1967). (Exs. L-DOC-1, -55, -346, -347, -351; S-6A, p. 31; S-6B, p. 5; S-6D, pp. 6-7; S-6O, pp. 19-20, 34;

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Tr. 461, 528-29, 971, 2888-89, 3003-04).

Ella was a permanent resident of the alleged Village at least until she moved to Kodiak in the early 1960's. However, by April 1, 1970, she clearly was not a permanent resident of the alleged Village. She was residing in Kodiak and did not intend to return to Woody Island because of deaths in the family, the absence of loved ones on the island, and the effects of aging and ill health. She did not live for a period of time in the alleged Village in 1970.

28. Michle "Mickey" Chabitnoy (res: 1960's)

29. Cecil Chabitnoy (res: 1960's, 1970)

They are the sons of Mike and Ella Chabitnoy. They were raised on Woody Island. Neither of them are enrolled to Woody Island.

No testimony or statements from Mickey were introduced. Neither Koniag nor Mr. Feichtinger identify him as a permanent resident of Woody Island in 1970.

He joined the Navy in the approximately 1956 and suffered a brain injury during a stop in New York City in 1960. He returned to Woody Island where he lived until he was institutionalized in Oregon in 1963 or 1964. He lived with his mother and Cecil in the Chabitnoy house until they moved to Kodiak.

Cecil and his mother moved to Kodiak sometime prior to the 1964 earthquake, with Cecil accepting a job at the Naval base on the outskirts of Kodiak. According to Mr. Feichtinger, Cecil lived on Woody Island thereafter "periodically" for "various periods of time" until his death on Woody Island in 1995. He was still living in Kodiak when he died. There is supporting evidence that he spent time on Woody Island after the earthquake, including during 1969 and 1970; but that evidence is very vague as to the nature and extent of his usage of the island. In 1970 Cecil was not living on Woody Island, according to Zelma Stone.

Cecil did not testify but did execute an affidavit. He stated in pertinent part, "Woody Island has been my home since birth. My family and cultural ties are all there. I still periodically go to Woody Island to live. My family has a long history there and my culture is linked to Woody Island Village." (Leisnoi's Answering Brief, p. 172; Exs. L-DOC-73, -346; S-6D, pp. 8-11; S-6O, pp. 19-20, 34; Tr. 461, 465, 972-73, 1638).

Neither of them was a permanent resident of the alleged Village on April 1, 1970, nor did either live there for a period of time in 1970. Mickey has been institutionalized since 1963 or 1964.

Cecil had moved to Kodiak for work in 1964. The evidence of Cecil's use is generally limited to vague statements that he spent time or lived on Woody Island periodically. For instance, Kelly Simeonoff Jr. stated in an affidavit that Cecil lived on Woody Island after

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Kelly was released from the military in January 1964, but the extent of his residency was vaguely described as "at various times." (Ex. L-DOC-346)

This vague evidence is juxtaposed against the voluminous evidence that the only Natives who lived in the alleged Village with any frequency or continuity after 1966 were William Wilfred Pavloff until he died in 1967, Johnny Maliknak, Nicholas Pavloff, and possibly Rudy Sundberg Jr. and Christina Hoen. Cecil's own half-sister, Natalie Simeonoff, stated in an interview that the island became too lonely for their mother in the 1960's because her loved ones, including Cecil, had left the island.

While an affidavit from Cecil was submitted, the affidavit provides very little detail regarding his alleged "periodic" residency on Woody Island, either as to duration, time periods, or activities. Nor does it explain why Cecil did not enroll to Woody Island or why he generally lived in Kodiak rather than Woody Island.

30. Simeon "Buddy" Fadaoff (dec'd: 1993; res: 1960's, 1970)

He was the son of Nicholas and Ella Fadaoff. He lived on Woody Island from his birth in 1930 until the late 1950's or early 1960's, when he married and moved to the State of Washington. Thereafter, he was observed on Woody Island only once during the decade ending in 1970. That visit took place in 1969. The Feichtinger Report states that he visited Woody Island in 1970, but there is no supporting evidence for this statement..

He did not enroll to Woody Island. No testimony or statement from him was introduced. Koniag does not list him as a permanent resident of Woody Island in 1970. (Tr. 985; Exs. L-DOC-125, -346)

He was not a permanent resident of the alleged Village in 1970, nor did he live there for a period of time in 1970.

31. James O. Fadaoff (dec'd: 1969; res: 1960's)

He was the son of Nicholas and Ella Fadaoff. He lived on Woody Island - mostly in the Chabitnoy house - from birth until he was arrested shortly after he killed Rosemary Challiak, his common law wife, on December 26, 1965. He pled guilty to manslaughter and died in prison in 1969. He was the last full-time resident of the Chabitnoy house. (Tr. 957, 960, 966-67; Exs. S-60, p. 34, L-DOC-73, and L-DOC-117; Armstrong Depo., pp. 68-69).

Obviously, his death in 1969 precludes him from being a permanent resident of the alleged Village in 1970 or from having lived there for a period of time in 1970.

32. Rosemary Challiak (dec'd: 1965; res: 1960's)

She was killed by her common law husband, James Fadaoff, on December 26, 1965.

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It is unclear how long she lived with James prior to her death.

Obviously, her death in 1965 precludes her from being a permanent resident of the alleged Village in 1970 or from having lived there for a period of time in 1970.

33. John Michael Waller (res: 1970)

He is enrolled to Woody Island. Statements from him were introduced via live testimony and by affidavit. He listed Woody Island as his permanent residence on April 1, 1970, but listed Kodiak as the place where he resided for two or more years on April 1, 1970, and as the place where he resided for an aggregate of 10 or more years.

He was born in 1947 to Eugene Litz and Marjorie Fadaoff, who was the daughter of Nicholas and Ella Fadaoff. His mother was raised at the Woody Island Baptist Mission.

As a baby he was adopted by John and Opal Waller, non-Natives, and raised at the Naval base on Kodiak Island until 1961, when the Waller's moved to Kodiak City. He did not discover the identity of his natural parents until after 1970.

From 1962 to 1966 he made "frequent" trips with friends to Woody Island and other islands for recreational hunting and gathering, beachcombing, exploring, and camping. The nearby islands were his "playground." In 1966 he graduated from high school and began attending college, first in the State of Washington and then in the State of Oregon. He visited Woody Island during the summers, including the summer of 1970. After graduating from college in 1971, he returned to Kodiak to live. Several witnesses testified that they had never seen him on Woody Island and that he was a resident of Kodiak.

He has served as the President and a Director of Leisnoi. He testified that he would like to go back to Woody Island and identified a homesite in the former FAA housing area in which he would choose to reside. (Exs. L-DOC-419; BIA-2B, p. 11; Tr. 186, 246, 305-10, 3127-32, 3136, 3141-46).

The evidence shows that Woody Island and other islands were merely his playground in his adolescence. It does not establish that the alleged Village was the center of his family life, Native or otherwise, at any time during the decade ending in 1970. He never lived there or engaged in subsistence activities of any significance. The alleged Village was not his permanent residence on April 1, 1970, and he did not live there for a period of time in 1970.

34. Natalie Fadaoff Simeonoff (dec'd: 1992; res: 1960's)

35. Kelly Simeonoff, Sr. (dec'd: 1997; res: 1960's)

36. Ellen Mae Pagano

37. Edson Nicholas Fadaoff, Jr. (res: 1960's)

38. Joseph Francis Fadaoff (res: 1960's)

39. Peter Simeonoff (dec'd: 1973; res: 1960's)

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40. Freddy Simeonoff (dec'd: 1970; res: 1960's)
41. Kelly Simeonoff, Jr. (res: 1960's)
42. Christina Simeonoff Hoen (res: 1960's, 1970)
43. Cien Marie Hoen Weeks (res: 1960's, 1970)
44. Chrislyn Kay Hoen (res: 1960's, 1970)

Freddy is not enrolled anywhere, as he was killed during the Viet Nam War in April 1970. Natalie, Kelly Sr., and Peter are enrolled to Uganik and Ellen, Edson Jr., Joseph, Kelly Jr., Christina, Cien, and Chrislyn originally enrolled "at large" but then changed their enrollment to Woody Island. Joseph is not sure why he enrolled to Woody Island.

Natalie was the daughter of Nicholas and Ella Fadaoff. In the 1930's, she married Kelly Sr. and they built a house near the Chabitnoy house in the South Village in approximately 1942. That house is referred to as the Simeonoff house. In 1946 they bought a home in Kodiak. Ellen, Peter, Freddy, Kelly Jr., and Christina are some of their children.

The family moved back and forth between Kodiak and Woody Island in accordance with the availability of employment and schooling until the early 1960's, living primarily on Woody Island from 1943 to 1956. Natalie, Kelly Sr., Freddy, and Peter also lived primarily on Woody Island for a year or two in the early 1960's.

Prior to the 1964 earthquake Natalie and Kelly Sr. moved to Uganik, where they lived each summer and two or three months of each winter until approximately 1975. They spent three or four months of each winter in Kodiak. Their children remained in Kodiak, although Peter eventually began living with them most of the time both in Uganik and Kodiak.

After the earthquake no family gatherings, whether for birthdays, Christmas, or Easter, were held on Woody Island. They did leave a piano and furniture in their home on Woody Island, and the evidence is conflicting as to whether that furniture remained there through 1970. In the 1960's, Natalie and Kelly Sr. purportedly "regularly visited" Woody Island and stayed for "extended periods of time."

However, Natalie stated in an interview that they gradually stopped going there, except "once in a while," in the 1960's because it was too lonely there for her mother Ella Chabitnoy after Ella's husband (Mike Chabitnoy) died and Ella's sons (Buddy Fadaoff, James Fadaoff, Cecil Chabitnoy, and Mickey Chabitnoy) left the island. Mike died in 1958, Buddy and Cecil left before 1964 earthquake, Mickey left in 1963 or 1964, and James left in 1965. In 1973 the visits of Kelly Sr. and Natalie to Woody Island tapered off because they bought property and began establishing a home in Bell Flats.

In Uganik, Kelly Sr. worked as a winter watchman for a cannery and fished in the summers. Natalie and Kelly established a garden and built a house there where their children would visit them at Christmas and during the summer. Natalie originally enrolled to Kodiak and then changed her enrollment to Uganik. In the case of Alaska Conservation Society v.

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Village of Uganik, ANCAB VE 74-99, VE 74-105, VE 74-109 (October 21, 1974), ALJ's Recommended Decision, at 20-23, 26-28, Natalie testified, Kelly Sr. concurred, and both the Administrative Law Judge and ANCAB found that Natalie, Kelly Sr., and Peter were permanent residents of Uganik as of April 1, 1970.

Ellen married Frank Pagano. They adopted and raised Edison Jr. and Joseph after the death of their mother, Mary Ponchene, in 1965. Their father, Edison Nicholas Fadaoff, Sr., who was the son of Nicholas and Ella Fadaoff, had disappeared in approximately 1958 and was presumed drowned. Edison Jr., born December 18, 1956, and Joseph, born August 31, 1954, lived with Mary on Woody Island until 1965.

The Pagano family lived in Kodiak until the mid-1960's, when they moved to Anchorage because Frank obtained a better job there. While living in Anchorage, they would "vacation" in Kodiak or Woody Island in the summer. They visited Woody Island "occasionally", mostly for daytrips, staying a few hours at least one day each year. They did not occupy a house there in 1970. Frank, Ellen, Edson Jr., and Joseph all listed Woody Island as their permanent residence on April 1, 1970, but listed Anchorage as the place where they resided for two or more years on April 1, 1970, and Kodiak as the place where they resided for an aggregate of 10 or more years.

Kelly Jr. joined the military in 1958. He returned for three months but could not find work so he rejoined. In approximately January 1964 he finished his military career and returned to the Kodiak area. Upon his return, he went to work in Kodiak and he and Peter engaged in subsistence activities and visited their grandmother Ella on Woody Island. They also engaged in subsistence activities elsewhere, such as Uganik.

Kelly Jr. purportedly "frequented" Woody Island. In the summers he spent time there tending cattle and the family's garden. He left clothing and modeling supplies there as evidence of his intent to return, and considered Woody Island to be "home".

However, he also testified that, in 1970, he did not go to Woody Island and it was not the center of his Native family life. That year he traveled between and lived in Kodiak and Anchorage while he looked for work. In the early 1970's, he went to work for Kraft's Men's Department, married, and began raising children in Anchorage, where he stayed for 23 years. He now lives in Kodiak. He listed Woody Island as his permanent residence on April 1, 1970, but listed Anchorage as the place where he resided for two or more years on April 1, 1970, and Kodiak as the place where he resided for an aggregate of 10 or more years.

He gave up his dream of living on Woody Island when he began raising children because it was impractical to live there. He explained that most people had moved away from Woody Island by the late 1960's to be closer to medical services, schools, and employment opportunities. He stated that employment choices played a huge role in determining where Natives chose to live.

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Freddy, born in 1949, was killed in Vietnam in April 1970. Prior to joining the military, Freddy lived with his parents when he was not attending school in Sitka, Alaska.

Peter loved Woody Island and spent a "great deal of time" there. However, he also found that it was impractical to live there because it was not safe to travel to and from Woody Island by skiff to access medical care for his children. The weather would not permit it. In 1970 he was living in Uganik. Neither Mr. Feichtinger nor Koniag included Peter in their lists of permanent residents of Woody Island in 1970. He died in 1973.

Christina married in 1962 and had two daughters, Cien, born November 28, 1963, and Chrislyn, born May 4, 1969. From 1956 onward, Christina resided in Kodiak, excepting that she stated by deposition and unsworn interview that she used the Simeonoff home on Woody Island as follows: (1) she spent each summer there from 1956 through 1961, (2) she spent less time there in 1962 and 1963 because her husband was in the Navy, (3) she and her family lived there from May 1964 until December 1964, and (4) she and her children lived there each summer from 1965 to 1973, including 8 or 9 weeks in 1970.

In May 1969 she and her husband began operating a sporting goods store in Kodiak. She clarified in live testimony that she and the children did not live 8 or 9 weeks on Woody Island in 1970, but merely spent weekends and some evenings there because she and her husband were busy operating the store. Her husband testified that their visits were limited to 10 or 12 weekends per year and some "good" days, not just in 1970 but throughout the decade ending in 1970. He added that they went there for recreation, picking berries, and rabbit hunting and did not stay longer than a weekend at one time.

She stated in an affidavit that they intended to stay on Woody Island permanently in 1964, but ceased living there primarily because the Simeonoff house no longer had running water. She elaborated that the water pipeline damage forced them to carry water from the Upper Lake, which they found too burdensome for their young family.

In a deposition, however, she dismissed as "no big situation" the difficulty of living on Woody Island at that time with an "erratic" water supply, because "there are quite a few wells and springs over there that have been there for years and a good supply of fresh water." Her husband testified that they moved back to Kodiak because it was too difficult to commute from Woody Island to his job in Kodiak and because it was "easier" to live in Kodiak. Christina confirmed the difficulty of the commute, stating that her husband often stayed overnight in Kodiak to avoid the commute.

She further testified that she considers Woody Island to be home, but that, in 1970, it was not possible for her to return to Woody Island to live because of the lack of employment opportunities. She would return to Woody Island to live if the circumstances were right, *i.e.*, if their employment and earnings were such that it was feasible and affordable to do so.

She paid taxes on the Simeonoff home and offered her mother \$15,000 to purchase her

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land on Woody Island before she sold it to the Brechan's for \$2,500. Christina and her children listed Woody Island as her permanent residence on April 1, 1970 and Kodiak as the place where they resided for two or more years on April 1, 1970. Christina also listed Kodiak as the place where she resided for an aggregate of 10 or more years. (Village of Uganik, *supra*, ALJ's Recommended Decision, at 20-23, 26-28; Exs. L-DOC-1, -129, -332 -346, -347, -350, -351, -A17; S-6O, p. 76, 91, 103; S-6F, pp. 15-27, 30, 33-35; S-6D, pp. 15, 17; BIA-2B, pp. 122, 102-00, 33, 29, 22, 15; Tr. 247, 980-83, 1046-47, 1066-75, 1084, 1090, 2108-37, 2695-96, 2944, 2964, 2977, 2981, 2985-93, 2997-99).

In the Village of Uganik case, Natalie, Kelly Sr., and Peter were found to be permanent residents of that village on April 1, 1970. The evidence presented in this case does not lead to a different conclusion. Further, they did not live for a period of time in the alleged Village in 1970.

While Respondents do not allege that Freddy was a permanent resident on April 1, 1970, he conceivably could have been one because he did not die in battle until later that month. However, he died at age 21 and had not established a residence independent of his parents prior to entering the military. Consequently, his permanent resident is determined according to that of his parents and therefore he was not a permanent resident of the alleged Village on April 1, 1970.

Edison Jr. and Joseph were minors on April 1, 1970. Consequently, their permanent residence is determined according to that of their adoptive parents, Ellen and Frank Pagano.

After the Pagano's moved to Anchorage in the mid-1960's, there is no evidence that they visited Woody Island with any frequency or consistency, that they used it for subsistence purposes, or that they lived there at all. They did not maintain a house there; they lived and worked in Anchorage and merely vacationed at Woody Island occasionally on daytrips. They were not permanent residents of Woody Island on April 1, 1970, and did not live there for a period of time in 1970.

Kelly Jr. made some use of Woody Island and the Simeonoff house there during the 1960's. However, he testified that in 1970 he did not visit there nor consider it the center of his Native family life, as he was living in Anchorage and Kodiak while he focused upon finding employment. Like so many other Natives, his fondness for Woody Island was overridden by a desire to be gainfully employed in the modern cash economy. He was not a permanent resident of the alleged Village on April 1, 1970, and he did not live there for a period of time in 1970.

The permanent residency of Christina is the most difficult to determine. She lived there in 1964 and clearly spent considerable time at the Simeonoff house each summer thereafter until 1973. She maintained the garden there, paid the taxes on the home, and attempted to buy the land from her grandmother. Nevertheless, her own testimony reveals that she abandoned by 1970 the continuing intent to return to Woody Island to live. By that

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time she was willing to return to Woody Island to live only if the circumstances were right, i.e., if her family's employment and earnings were such that it was feasible and affordable to do so. Her lack of a continuing intent to return to the alleged Village is further evidenced by the efforts of herself and her husband to establish a home in Bell Flats rather than on Woody Island, beginning in 1973. Consequently, she was not a permanent resident of the alleged Village on April 1, 1970.

Because her children, Cien and Chrislyn, were minors on April 1, 1970, their permanent resident is determined according to that of their parents. Consequently, their permanent residence was not the alleged Village on April 1, 1970.

45. Anastasia "Nettie" Fadaoff Harmon Hartle (dec'd: 1976; res: 1960's)

46. James Gane Harmon Hartle (res: 1960's, 1970)

Anastasia was the daughter of Nicholas and Ella Fadaoff. She was born and raised on Woody Island. She first married Raymond Royal Harmon, who died in a boating accident in the 1940's. Her second marriage was to Ernie Hartle, a commercial fisherman. She died in 1976.

She and her family lived in the Harmon house from 1952 until approximately 1959, when they moved to Kodiak. In approximately 1961, Ernie, Anastasia, and her youngest son, James Gane Harmon Hartle, born December 25, 1952, moved to the State of Washington because Ernie accepted employment there. They remained in Washington, except for the following periods when they returned to Kodiak to live. First, several months after the 1964 earthquake they returned and stayed until May or June of 1965. Second, in 1968 they returned for an unspecified length of time. That year was the last year that Ernie fished commercially. He then worked for a cedar mill in Washington. Third, James alone returned in 1970 for commercial salmon fishing.

During their stays in Kodiak, they did "frequent[] Woody Island many times," including living in the Fadaoff/Madsen house during the summer of 1964. After 1964, Anastasia and Ernie never returned to Woody Island to live.

During the summers of both 1968 and 1970, James fished commercially with his half-brother Paul Harmon on the boat named "Banshee". They obtained their food and supplies in Kodiak, but sometimes on the weekends they camped or slept on their boat at Woody Island. James testified that he did this "several" times during 1970. Paul testified that they did so at least 4 or 5 times that year to "goof off", swim, and visit their brother Daniel's grave. James referred to Woody Island as "home" and testified that he wanted to return from Washington to Woody Island to live but did not do so because of a lack of employment opportunities on Woody Island.

No testimony or statement from Anastasia was introduced. James Hartle testified that his parents told him that they would like to have moved back to Woody Island. Conversely,

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Patricia Hampton and Yule Chaffin related hearsay statements that Anastasia and Ernie did not intend to return to Woody Island to live because of the lack of employment opportunities.

Both James and Anastasia are enrolled to Woody Island. The Family List gives the same address in Amanda Park, Washington for both James and Anastasia. James lived with Anastasia throughout the 1960's and 1970. James listed Amanda Park in response to the question of where he resided for two or more years on April 1, 1970, while Anastasia gave no response. James also listed Amanda Park as the place where he resided for an aggregate of 10 or more years; Anastasia listed Kodiak. Anastasia listed Woody Island as her permanent residence on April 1, 1970. (Tr. 973-76, 1628-29, 1642-43, 1649, 1652-58; Exs. L-DOC-124, -125, -385, p. 7,060; BIA-2B, pp. 96, 30)

Because James was a minor on April 1, 1970, his permanent residence is determined according to that of his parents. His parents did not return to Woody Island to live after the summer of 1964. They lived and worked in the State of Washington and did not even visit the island frequently or consistently. Evidence of their subjective intent to return is conflicting, and the objective evidence is strongly supportive of a finding that they were not permanent residents of the alleged Village on April 1, 1970.

Nor did Anastasia or James live there for a period of time in the alleged Village in 1970. After 1964 Anastasia never returned there to live. James camped there primarily for recreation only a half-dozen times in 1970, staying on his boat at least one of those occasions.

47. Daniel L. Harmon (res: 1960's)
48. Paul R. Harmon (res: 1960's, 1970)
49. Maurice W. Harmon (res: 1960's, 1970)
50. Rayna Joyce Harmon Lohse Monroe Austerhouse (res: 1960's)
51. Leanna Ellen Harmon King Castillo (res: 1960's)

They are the children of Anastasia and Raymond Harmon. The family lived on Woody Island - mostly in the Harmon house - from 1950 through approximately 1959.

All of the males joined the military. Daniel joined in 1962 or 1963, was killed in the Viet Nam War in 1967, and is buried on Woody Island where he had hoped to build a house someday, according to his brother Maurice.

Maurice enlisted in 1959 and returned in 1961. He then lived on Woody Island for a few months before moving to Kodiak where employment was available. He was in the National Guard during the 1964 earthquake. After his release from the Guard, he lived in the Chabitnoy house with James Fadaoff for a couple of months. He moved back and forth between Kodiak and Woody Island several times.

After 1964, Maurice stayed overnight at Woody Island for only 2 or 3 nights. Those overnight stays occurred in 1970 while he overhauled seine. In 1970 he also made two or

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three daytrips there to visit Daniel's grave, but he did not live there. Mr. Feichtinger's vague statement that Maurice spent a "considerable amount" of time on Woody Island in 1970 engaged in "traditional and subsistence" activities is a misleading exaggeration.

Maurice fished commercially and for subsistence purposes in the Kalsin Bay area throughout the 1960's. Maurice moved to Washington State by 1968 to attend welding school. In 1970 he and his wife and children were living in Washington, although Maurice also commercially fished in Alaska. His children have never been to Woody Island since they moved to Washington.

Paul enlisted in 1960. In 1963 he got married in Hawaii. In 1964 he left military service and he and his wife had their first child while they were living in the State of Washington.

Paul returned to the Kodiak area in 1965. Like Maurice, Paul fished commercially and for subsistence purposes in the Kalsin Bay area throughout the 1960's. From 1965 through 1970 he lived either in Kodiak or Washington State, typically living in Kodiak during the spring, summer, and fall while he commercially fished and living in the Amanda Park area of Washington during the winter. He worked in a shake mill there.

Paul stated that, upon his return to Kodiak in 1965, he lived on a fishing boat. He stated, "I frequently went to live for periods on Woody Island where I would stay with my Uncle James Fadaoff or with Johnny Maliknak. I fished during this period off and on and would frequently tie up at Woody Island and stay there when not fishing." "This period" likely refers to 1965, as his Uncle James Fadaoff ceased living on Woody Island at the end of 1965. His wife and child joined him in Kodiak later that year where they rented an apartment or house. His family stayed with him in Kodiak through at least 1966. The family visited but never lived on Woody Island. He also indicated that he was living "off and on" in Kodiak and Woody Island in 1967.

As previously discussed, in 1968 and 1970, he commercially fished with his half-brother James Hartle on his boat named "Banshee" They obtained their food and supplies in Kodiak, but sometimes on the weekends they camped or slept on their boat at Woody Island. He remembered spending the night on Woody Island at least 4 or 5 times in 1970, either staying on a boat or with his uncle Johnny Maliknak. He went there to "goof off", swim, and visit his brother Daniel's grave.

Both Leanna and Rayna moved to Kodiak in approximately 1959 and married. According to her brothers, Leanna "did not return much to [Woody] Island after that * * *." She was best friends with Patricia Hampton and Patricia never saw Leanna again on Woody Island after 1959. Leanna was living in the State of Washington in 1970.

According to Mr. Feichtinger, Rayna and her husband visited Woody Island "on a very, very regular basis, often staying days at a time," until 1967 when she divorced her

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husband and relocated to the State of Washington. In fact, until a recent visit, she had not been on Woody Island since her brother Danny died in 1967.

Leanna and Rayna are enrolled to Woody Island. Leanna listed Woody Island as her permanent residence on April 1, 1970, but listed Seattle as the place where she resided for two or more years on April 1, 1970, and Kodiak as the place where she resided for an aggregate of 10 or more years. Rayna listed Woody Island as her permanent residence on April 1, 1970, and as the place where she resided for an aggregate of 10 or more years, and listed Bremerton, Washington, as the place where she resided for two or more years on April 1, 1970.

Maurice and Paul are not enrolled to Woody Island. The Family List shows that Maurice listed Woody Island as his permanent residence on April 1, 1970, the place where he resided for two or more years on April 1, 1970, and the place where he resided for an aggregate of 10 or more years. Paul listed Woody Island as his permanent residence on April 1, 1970, but did not identify a place where he resided for two or more years or for an aggregate of 10 or more years. The Family List identifies both their addresses as an address in Amanda Park, Washington, which is the same as their mother's address. Both them still resided in Washington as of the date of hearing. Both stated by affidavit that they would like to return to Woody Island to live but have not done so because of the damage to the water system, the closing of the FAA facilities and related ferry service, the school closing, and the lack of employment opportunities. (Tr. 189, 247, 961, 977-78, 980, 1003-04, 1450, 1465-69, 1574-79, 1585-87, 1599-05, 1601-06, 1608, 1611, 1619-21, 1642-43, 1665-67, 1676-85, 1688, 3523-24; Exs. L-DOC-81, -85, -117, -118, -124, -125; BIA-2B, pp. 132, 97, 36, 31-30, 23).

Daniel, who died in 1967, obviously was not a permanent resident of the alleged Village in 1970 nor did he live for a period of time there in 1970.

Both Maurice and Paul basically lived where there was work or schooling, either in the State of Washington or in Kodiak during breaks from commercial fishing. The Harmon house was not standing by 1970 and there is no evidence that they used it after the earthquake. Instead, during their infrequent visits in the late 1960's and 1970, they either did not stay the night or stayed on their boats, camped, or roomed with relatives. Further, there is little evidence that they relied upon Woody Island for subsistence purposes during the decade ending in 1970.

They stated that they have not returned to Woody Island to live for various reasons. However, there are wells to compensate for the lack of running water. Further, the closing of the FAA facility and ferry did not occur until after 1970 and they chose to live in Washington and Kodiak long before the closing of the school in May 1969. Once again, it is the lack of employment opportunities that stands out as the primary reason for choosing not to live in the alleged Village up through 1970.

Neither Paul nor Maurice was a permanent resident of the alleged Village on April 1,

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1970. Neither of them lived there for a period of time in 1970. Paul spent the most time there in 1970, but that was only about a half-dozen weekends to "goof off", swim, and visit his brother's grave.

Rayna and Leanna spent even less time on Woody Island. Rayna relocated to the State of Washington and did not visit Woody Island after 1967 for approximately 30 years. Leanna did not return much, if at all, after 1959. They did not live there after 1959 or attempt to maintain the Harmon house. They were not permanent residents of the alleged Village on April 1, 1970, and did not live there for a period of time in 1970.

52. Michael Nicholas "Mitch" Komm Gregoroff (res: 1960's, 1970)

He is not enrolled to Woody Island. He applied to enroll to the Natives of Kodiak and listed his mother's address in Amanda Park, Washington as his place of permanent residence on April 1, 1970. He listed Kodiak as the place where he resided for an aggregate of 10 years or more. He testified and executed affidavits introduced into evidence.

He was born in 1937 to Anastasia Fadaoff Harmon Hartle and Kelly Gregorioff. He was raised by the Komm family in Kodiak and the State of Washington. He spent 8 years of his early childhood living in the State of Washington because of health problems.

In 1950 he began living with his mother and half-siblings on Woody Island, first in the Pavloff house and then in the Harmon house. He lived there until approximately 1960, when he joined the military. Prior to the 1964 earthquake and tidal waves he returned to Kodiak, where he took up residence and worked for a cannery.

He then moved to the State of Washington in 1964 because the canneries in Kodiak were wiped out by the tidal waves. However, by 1966 there were 18 seafood plants in Kodiak and 8 more at other points on Kodiak Island where he could have sought employment. Furthermore, he continued to work in Alaska from 1964 onward, fishing commercially and for subsistence purposes nine months each year in Adak and Kalsin Bay.

He lived in Washington the other three months of each year until 1969. He may also have lived on Woody Island sporadically for brief periods of time while fishing. In 1969 and 1970 he lived on the boat named "Joel-B", using Kodiak as a base of operations for commercial fishing. In 1970 he did not stay overnight on Woody Island and did not visit there much.

He referred to both Woody Island and the Joel-B as "home." He does not live on Woody Island because there is no ferry service to access Kodiak where employment opportunities, health care, and schools are located and because there is no running water on Woody Island. (Leisnoi's Answering Brief, p. 172; Tr. 419, 974-75, 1003-04, 1400, 1433-38, 1450, 1453-56, 1463, 1604, 1608, 1611; Exs. L-DOC-73, -117, -118, -129, -149).

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His permanent residence was not the alleged Village on April 1, 1970, nor did he live there for a period of time in 1970. Until 1969 he returned to Washington, not Woody Island, after commercial fishing to be with his family. In 1969 and 1970 his base of operations to which he returned was Kodiak. His visits to Woody Island were not frequent nor substantially for subsistence purposes. He did not stay overnight nor visit much in 1970. He specifically chose not to live or enroll there.

The reasons for his choice are similar to those of his half-brothers, Paul and Maurice Harmon. As with his half-brothers, the lack of employment opportunities stands out as the primary reason for his choice up through 1970.

53. Alexander "Alexie" John Fadaoff, Sr. (dec'd: 1988; res: 1960's)

54. Charlotte White (res: 1960's)

55. Alexander John Fadaoff, Jr. (res: 1960's)

56. David James Fadaoff (res: 1960's)

Alexander Sr. was born to Anastasia Fadaoff in 1934 and was raised in the Kodiak Baptist Mission. His father is unknown. He was married to Charlotte in the 1950's. He died in Seattle in 1988 and is buried on Woody Island.

Charlotte and Alexander Sr. had two children, Alexander Jr., born in 1955, and David, born in 1959. According to Mr. Feichtinger, the family lived primarily in Kodiak but "visit[ed] frequently for periods of time [Anastasia and Ella Fadaoff] on Woody Island" during the 1960's. There is no doubt that Alexander Sr. did visit, as he was seen fishing there in 1970. However, live-long Woody Island resident Johnny Malinkak identified 41 Natives as having resided on Woody Island at some time during the period of April 1, 1960, to April 1, 1970, and Alexander Sr. and his family were not included on that list. Zelma Stone also testified that they never lived on Woody Island, but, rather, alternated between living in Kodiak and Seattle.

None of them is enrolled to Woody Island and none is listed as a 1970 resident thereof in the Feichtinger Report. No statement or testimony from any of them was introduced into evidence. The Family List shows that Alexander Sr. and Alexander Jr. both listed Woody Island as their permanent residence on April 1, 1970, but listed Seattle as the place where they resided for two or more years on April 1, 1970, and Kodiak as the place where they resided for an aggregate of 10 or more years. (Tr. 483-84, 509, 974, 979, 1466-67; Exs. L-DOC-16, -108, -118, -161, p. 91; -176, -385, p. 7004; BIA-2B, pp. 40-9).

The weight of the evidence shows that none of them was a permanent resident of the alleged Village at any time during the decade ending in 1970. It further shows that none of them lived for a period of time there in 1970.

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CHYA FAMILY

- 57. Mary Shuravloff Chya (dec'd: 1996; res: 1970)
- 58. John Chya (dec'd: 1984; res: 1970)
 - 59. Betty Chya Wolf Stowers
 - 60. Walda Chya Hoff (res: 1970)
 - 61. Marvin Love (res: 1970)
 - 62. David Love (res: 1970)
 - 63. Keith Abraham (res: 1970)
 - 64. Randy Abraham (res: 1970)
- 65. Nettie Carol Chya Matthews
- 66. Norma Dale Larsen
- 67. Jonna Chya Purcell
- 68. Virginia Lee Deveau
- 69. John William Chya, Jr. (res: 1970)
- 70. Michael George Chya (res: 1970)
- 71. Nova Lemoire Chya (dec'd: 1988; res: 1970)
- 72. Edward Chya (res: 1970)
- 73. Tamera Rae Chya (dec'd: 1997; res: 1970)

The only statements from these Natives introduced into evidence are: the 1978 deposition of Mary, unsworn interviews of Michael, Edward, Betty, Nettie, and Jonna, and affidavits submitted with Leisnoi's application. Mary, John, Norma, Jonna, Virginia, John Jr., and Michael executed affidavits discussing their purported use and occupancy of Woody Island and they signed a separate affidavit stating that Woody Island was temporarily unoccupied in 1970 because of the closing of the school there in 1969.

Mary was born in 1921 and John was born in 1904. Her grandparents lived on Woody Island, her parents maintained gardens there, and she visited Woody Island as a child. John's parents were raised on Woody Island at the Baptist Mission and John lived on Woody Island as a child.

Mary lived in Kodiak her entire life and John lived in Kodiak for his entire adult life. John worked for Kodiak Electric Association for 29 years. They married and had numerous children, including Betty, Walda, Nettie, Norma, Jonna, Virginia, John Jr., Michael, Nova, Edward, and Tamera, born in 1940, 1943, 1944, 1949, 1950, 1952 (June 7), 1957, 1958, 1961, 1963, and 1964, respectively. The family lived in Kodiak, but visited Woody Island to picnic, beachcomb, pick berries, hunt, and fish.

Mary, John, and the children, except Walda, are all enrolled to Woody Island. Mary, John, and the five youngest children originally enrolled elsewhere. Walda enrolled to the Village of Bell Flats and her children, Keith, Randy, Marvin Jr., and David, born in 1962, 1964, 1967, and 1969, respectively, are not enrolled to Woody Island.

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The Woody Island enrollees all listed Woody Island as their permanent residence on April 1, 1970. However, all of them, except Jonna, listed Kodiak as the place where they resided for an aggregate of 10 or more years. Jonna listed Woody Island as the place where she resided for an aggregate of 10 or more years and for two or more years on April 1, 1970. Betty and Nettie listed Anchorage as the place where they resided for two or more years on April 1, 1970, and the rest listed Kodiak as the place where they resided for two or more years on April 1, 1970.

Walda stated that her parents considered Woody Island to be home. Edward stated that his mother talked of wanting to move to Woody Island. He also said that he would love to live on Woody Island. Neither of them knew why their parents never lived on Woody Island as adults.

Each of the identical affidavits submitted with Leisnoi's application states that the affiant lived on Woody Island for periods of time each year where "my residence consists of a 5 room house * * *." Contrary to the content thereof, Mary Chya admitted that neither she nor her husband or children had a house on Woody Island or lived there for periods of time each year (except her husband as a child). In fact, according to Mary, they lived in Kodiak and stayed overnight on Woody Island only two or three times over the many years they visited there.

According to Mr. Feichtinger, they "frequented Woody Island to visit and engage in traditional and subsistence activities," including "visit[ing] [Woody Island with those children still living with Mary and John] throughout 1970 on a regular basis." Mr. Feichtinger based his statements upon the deposition testimony of Mary.

Mary did testify that they visited Woody Island in 1970 but did not state that they went there regularly or otherwise identify the frequency of their visit(s). Michael remembered going to Woody Island only a couple of times around 1967 or 1968 with relatives other than his parents.

Three of the older children, Nettie, Jonna, and Walda stated that they never lived or spent the night on Woody Island. Nettie stated she and her husband and two older children visited Woody Island during the decade ending in 1970 to beachcomb, picnic, and look around. Jonna indicated that the Chya family would take the ferry to visit Woody Island during that decade and would then walk around and pick berries. She did not have strong memories of Woody Island, suggesting that their visits were neither frequent nor of great significance. Walda remembered picnicking, playing, and picking berries there with her parents and siblings.

As an adult, Walda and her children and husband at that time, Marvin Love, Sr., made weekend daytrips to Woody Island in the 1960's and 1970 when Marvin Sr. was off work. They picnicked and picked berries. Her husband also hunted rabbits.

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Betty stated that she visited Woody Island with her parents as a child but only spent the night there a few times during slumber parties with a church group. She stated that she moved from Kodiak to Anchorage in the late 1960's and was not on Woody Island in 1970.

None of the older children (Betty, Nettie, Norma, Jonna, Virginia), except Walda, are listed in the Feichtinger Report as a 1960's resident or 1970 resident of Woody Island. Walda and her four children, are listed as 1970 residents. Numerous witnesses identified the Chya family as residents of Kodiak. (Leisnoi's Answering Brief, p. 172; Tr. 248-54, 305-10, 420, 968-70, 1006, 1355, 2033, 2071; Exs. BIA-2A, pp. 117-115, 114-11, 101-87, 84-82; BIA-2B, pp. 146, 138, 117-16, 109-08, 36-35, 25, 20; L-DOC-33, -130, -137, -181, -322, -365; S-6N; L-CHART-4; Armstrong Depo., p. 43).

Virginia, John Jr., Michael, Nova, Edward, and Tamara were all minors on April 1, 1970, and therefor the permanent residence of each of them shall be determined according to that of their parents. Similarly, Keith, Randy, Marvin, and David were all minors on April 1, 1970, and therefor the permanent residence of each of them shall be determined according to that of their parents.

The facts show that no one in the family ever lived on Woody Island, except John during his childhood. They simply made daytrips there, primarily for recreational purposes. There is no clear indication of how often they visited. There is no substantial evidence that Woody Island served as a significant source of subsistence foods or otherwise served as the center of their Native family life during the decade ending in 1970. The alleged Village was not the permanent residence of any of them on April 1, 1970, and none of them lived there for a period of time in 1970.

REDICK FAMILY

74. Marie Redick Unger (res: 1970)
75. Larry T. Redick (res: 1970)
76. William W. Redick (res: 1970)
77. Robert J. Redick (res: 1970)
78. David W. Redick (res: 1970)

Larry, William, Robert, and David, born in February 23, 1960, April 6, 1952, April 5, 1953, and March 21, 1954, respectively, are the children of Marie and her non-Native husband. Marie's deposition taken in 1978 and unsworn interviews of Larry, William, and David conducted in 1998 were introduced into evidence. No statement from Robert was introduced.

Marie and her children, except David, are enrolled to Woody Island and listed Woody Island as their place of permanent residence on April 1, 1970, but listed Kodiak as the place where they resided for two or more years on April 1, 1970, and for an aggregate of 10 or more years. Marie originally enrolled to the Natives of Kodiak but switched to Woody Island when

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she found out she could enroll to a village where she had ancestral ties. David enrolled to the Natives of Kodiak.

Marie's great grandfather was Nikolai Litnik, who lived with his children and some of his grandchildren on Woody Island around 1920. Marie lived for periods of time in the summer on Woody Island with her mother until Marie was 12 or 13 years old (1944 or 1945).

At all other times she has lived in Kodiak. She, her husband, and her children have lived in Kodiak to be close to employment and activities for the children. Marie testified in 1978 that she felt she belonged on Woody Island and that she planned to return to Woody Island when her kids were grown. She stated that the closing of the FAA school on Woody Island was not the reason why she had not yet returned.

She further testified that she and her family traveled to Woody Island every summer during the decade ending in 1970 for a week or two at a time, that they stayed in the Simeonoff house and she weeded the garden there, and that they fished, picked berries, cut trees for fuel, beachcombed and picnicked there. She qualified that David did not go with them in 1970 and that they stayed for one week in 1970. Mr. Feichtinger characterized the week stay as a "considerable amount of time" spent on Woody Island in 1970.

Marie's testimony is somewhat at odds with the statements of her children. David stated that they did not go to Woody Island frequently, but, rather, "a couple of times" to picnic, and that he does not remember staying overnight. Larry similarly stated that they went there on a "few occasions" but that he did not spend the night there until the 1970's and that he did not want to move there. Likewise, William said that they had a "few" picnics there in the early 1960's, that he did not spend the night before 1970, that he could not remember if he was there in 1970, and that his mother had never indicated to him that she would like to live on Woody Island. (Leisnoi's Answering Brief, p. 172; Tr. 248-54, 305-10, 420, 943, 1007, 2033, 2810; Exs. BIA-2B, pp. 109-08, 20-19; L-DOC-329, -330, -332; S-6L; Armstrong Depo., pp. 69-70).

While the Redick's clearly spent some time on Woody Island during the decade ending in 1970, including 1970, as confirmed by Christina Hoen, Esther Denato, and others, their use was mostly recreational and not frequent or extensive. The center of their Native family life was Kodiak, where they resided and where there were activities for the children and employment opportunities. Woody Island, by Marie's own admission, was not the place where she intended to return to live in 1970 but a place to go after her children were grown. Consequently, Woody Island was not her permanent residence during the 1960's or on April 1, 1970. The same holds true for her children, as they were all minors on April 1, 1970, and therefor their residency is established according to that of their mother.

According to Marie, she, Larry, William, and Robert stayed in the alleged Village for approximately one week in 1970 for recreational and subsistence purposes. The children have little or no memory of this week-long stay. It is questionable whether this week-long stay

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qualifies them as enrollees who lived for a period of time in the alleged Village in 1970

ROBERTSON FAMILY: John "Jack" R. Robertson had a homestead site on Woody Island that he never perfected prior to his disappearance in the 1930's (L-DOC-334; Tr. 1699, 1702-04, 1745-46). His son, William J. Robertson, Sr., married Myra Malutin.

79. Myra Malutin (dec'd: 1982 or 1983; res: 1970)

80. William Robertson, Jr. (res: 1970)

81. Bruce Robertson (res: 1970)

William J. Robertson, Sr., and Myra Malutin are the parents of William Robertson, Jr., who is the father of Bruce Robertson, born November 14, 1953. Myra apparently lived and worked on Woody Island prior to World War II. Thereafter, she lived in Kodiak but spent "a lot" of time on Woody Island, according to her son William Jr. She visited Woody Island at least once in 1970, according to Yule Chaffin's diary. No statement or testimony from her was introduced into evidence.

William Jr. owned a home in Kodiak City where he and his family lived from 1952 through 1974. From 1960 through 1970, Kodiak was listed as his residence on his driver's license and voter registration card. He attended church there and considered it his home in 1970.

He earned a living by working for the U.S. Navy and the U.S. Coast Guard in Kodiak for 24 years and by commercial fishing. During the 1960's, his wife worked for Sears Roebuck & Company in Kodiak.

William Jr. and his family have never owned or lived in a structure on Woody Island. He tried unsuccessfully to acquire land on Woody Island: namely, the former homestead site of his grandfather, Jack Robertson, and the Chabitnoy property. He did not think of Woody Island as his home but as "a place that we would like to have a homesite or a place to retire to, a summer home or whatever." When he retired from the Coast Guard in 1974, they moved to Tacoma, Washington, but he has returned to the Kodiak area each summer to fish.

Bruce testified that his father "frequented" Woody Island in 1970. At the time he considered Woody Island to be his "home away from home." That year he and his dad made 15 to 20 or more daytrips to the island in their boat to fish, swim, hunt rabbits, and beachcomb. He also went there with "the Sundberg boys." He could not remember if they ever stayed overnight. They also camped and recreated elsewhere. Bruce has been married twice and neither of his two wives nor his two children have ever visited Woody Island.

Consistent with Bruce's testimony, his father testified that they have visited but never lived on Woody Island nor stayed overnight there from 1960 through 1970. He characterized Woody Island as their primary picnicking and beachcombing area when they lived in Kodiak. He likened their visits there to going to a park.

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When the old FAA housing was being renovated by Leisnoi in the mid-1970's, Karl Armstrong asked Bruce if he was interested in living there. Bruce testified that he replied he had no interest because there were no employment opportunities there.

Myra was not enrolled to Woody Island. William and Bruce first applied to enroll to Ouzinkie but are now enrolled to Woody Island. Each of the two listed Woody Island as his permanent residence on April 1, 1970, but listed Kodiak as the place where he resided for two or more years on April 1, 1970, and as the place where he resided for an aggregate of 10 or more years. (Leisnoi's Answering Brief, p. 172; Tr. 246, 948-49, 1002, 1695-97, 1704-08, 1710-25, 1736, 1745-49, 1752-57, 1761, 1767-68; Ex. L-CHART-8; BIA-2B, pp. 104, 18)

The evidence of Myra's use of Woody Island after World War II is limited to one visit in 1970 and her son's vague statement that she spent "a lot" of time on Woody Island. None of the multitude of witnesses identified her as one of the few Natives who used or occupied Woody Island with any frequency or consistency in the late 1960's or 1970. She was not a permanent resident of the alleged Village and did not live there for a period of time in 1970.

Because Bruce was a minor on April 1, 1970, his permanent residence shall be determined according to that of his parents. His father, William Jr., established long-term employment and residency in Kodiak and never lived or stayed overnight on Woody Island. He viewed Woody Island as a "park" where they could picnic and beachcomb and as a place where he would like to retire or have a summer home. He was not a permanent resident of the alleged Village on April 1, 1970, and therefore neither was his minor son Bruce. Neither of them lived for a period of time in the alleged Village in 1970, but merely recreated there on daytrips.

WARD FAMILY

82. Kyra Ward (res: 1970)

83. Edward Ward (res: 1970)

Edward was born January 30, 1953, and Kyra was born June 22, 1955, to Harold and Betty Ward. Edward, Kyra, their siblings, and father are Woody Island enrollees, yet Edward testified that none of them ever lived on Woody Island. Betty is not enrolled to Woody Island. Except for the testimony of Edward, no statement or testimony from any of the Wards was introduced into evidence.

Harold and Betty were close friends with Bill and Zelma Stone. Zelma confirmed that the none of the Wards ever lived on Woody Island and she never saw any of them there.

The Ward family moved from the State of Washington to Kodiak in September 1965. His parents moved to Anchorage in 1977 and now live in Wasilla, Alaska. Edward moved to Homer, Alaska in the late 1980's.

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The Family List shows that Harold, Edward, and Kyra all listed Woody Island as their permanent residence on April 1, 1970, Kodiak as the place where they resided for two or more years on April 1, 1970, and Sitka as the place where they resided for an aggregate of 10 or more years. Thus, apparently, the family lived in Sitka before they lived in Washington.

Edward testified that his father had ancestral ties to Woody Island, although those ties were never clearly identified. At the time they enrolled, Edward did not know much about his father's history and ancestry, so he questioned him about them. He testified that he had to "pry[] the history out of my father on his ancestry and the tranquility of [Woody Island.]" At that time they had lengthy discussions regarding where to enroll. His father's expressed "concern was being back where his roots were. * * * All he ever talked about was being able to get back to Woody Island."

Edward testified that, as of 1970, the family's home was in Kodiak, where they lived, went to school, attended church, and received their mail and where his parents were registered to vote and licensed to drive. From 1969 to 1971 Edward visited Woody Island a couple of dozen times with friends to avoid chores at home, hunt rabbits, harass the cattle, and otherwise recreate. Kyra also visited the island with him or her friends. Most of his visits were daytrips. His longest stay was two nights and three days.

Edward is now the CEO and President of Leisnoi. (Tr. 417, 419, 426, 463-64, 1000-01, 2454-57, 2461-68, 2476, 2490, 2496-98, 2506-29; Ex. BIA-2B, pp. 105, 11-10).

Because Edward and Kyra were both minors on April 1, 1970, their permanent residence shall be determined according to that of their parents. Their father is the only parent with any ties to Woody Island and those ties were never clearly defined. What is clear is that he never lived there and that there is no evidence that he even visited there. Neither parent's permanent residence was the alleged Village on April 1, 1970, and therefore the permanent residence of Kyra and Edward was not the alleged Village on April 1, 1970.

Further, Kyra and Edward did not live for a period of time on Woody Island, let alone the alleged Village, in 1970. They merely recreated there with friends, primarily on daytrips.

OTHERS

84. Marty Charles Shuravloff (res: 1970)

He was born in 1953 to Martha and Nick Shuravloff. His maternal grandparents lived on Woody Island. His mother also lived there, both in the Baptist Mission and in her own home. She moved to Kodiak in the early 1940's. Marty's father has never lived on Woody Island. While his parents sometimes took the family to Woody Island for picnics, they have lived in their own home in Kodiak since the mid-1940's. Nevertheless, they are enrolled to Woody Island, listing it as their permanent residence on April 1, 1970, but listing Kodiak as the place where they resided for two or more years on April 1, 1970, and for an aggregate of

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10 or more years.

Marty testified at the hearing and an unsworn interview of him was also introduced into evidence. No statement or testimony from his parents was introduced.

Marty lived in Kodiak with his parents up through the decade ending in 1970. As an adolescent in the 1960's, he traveled with friends to Woody Island and other islands to hunt, fish, and "fool around". They viewed Woody Island as their "playground". Mr. Feichtinger indicated that Marty spent a "considerable amount of time" there in 1970, but Marty was not sure whether he spent any time there in 1970.

In the mid-1970's, Marty became the general manager of Leisnoi's project to renovate the FAA housing on the east side of Woody Island. During the renovation he and his wife and children lived in that housing for 4-6 months before moving back to Kodiak. Except for those months and a period when he attended college, he has lived in Kodiak all his life.

He is enrolled to Woody Island. He listed Woody Island as his permanent residence on April 1, 1970, but listed Kodiak as the place where he resided for two or more years on April 1, 1970, and as the place where he resided for an aggregate of 10 or more years. (Tr. 248-54, 420, 941, 948, 1007-08, 2034, 2095, 3151-68; Exs. L-CHART-7; BIA-2B, pp. 115, 16).

Because Marty was a minor on April 1, 1970, his permanent residence shall be determined according to that of his parents. Their permanent residence, and consequently Marty's permanent residence, throughout the decade ending in 1970 was Kodiak, not the alleged Village.

Also, Marty did not live for a period of time in the alleged Village in 1970. He was not sure if he visited there in 1970 and Woody Island was simply one of several "playgrounds" visited by himself and his friends.

85. Charles C. Naughton (dec'd: 1997; res: 1970)

He testified via deposition taken in 1978. He first enrolled to the Natives of Kodiak and then applied to change his enrollment to Woody Island. He believed that he could have chosen to enroll anywhere in Alaska, but chose Woody Island because he had been there, felt he belonged there, knew and respected the people enrolling there, and was attracted by the potential long-term economic benefits.

He testified that he is enrolled to Leisnoi, but he is not listed on the certified Native Roll for Woody Island. He listed Woody Island as his permanent residence on April 1, 1970, but listed Kodiak as the place where he resided for two or more years on April 1, 1970, and as the place where he resided for an aggregate of 10 or more years. He was born in 1947.

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His ancestors are from Katalla in southeast Alaska. He has no ancestral ties to Woody Island. However, he did grow up in Kodiak and on Woody Island. He had relatives, Janet and Pappy Lee, who lived in the FAA housing on Woody Island prior to the 1964 earthquake. He stayed with them summers and some winters until approximately 1961.

Thereafter, he has not lived on Woody Island but has visited the island, staying no more than a week or two at a time. His uncles, Harold and Edward Naughton, confirmed that he lived in Kodiak, not on Woody Island, during the 1960's, and that he sometimes camped on Woody Island. He would stay in his boat, in a dilapidated cabin near Sawmill Point, or in the Chabitnoy house. He testified that he visited the island once a week or twice a month in the summertime, but it is not clear whether he was referring to the years after or before 1970 or both.

By 1970 he was approximately 20 years old and had entered college in the State of Washington. In the summers he commercially fished in Anton Larsen Bay and fished for subsistence purposes off of Woody Island. He also hunted rabbits there. Karl Armstrong testified that Charles probably was on Woody Island in 1970, whereas Paul Harmon did not see Charles there in 1970. One year Charles took time off from college to work as a truck driver and he was not sure if that year was 1970.

By 1978 he was living and working in Anchorage, but visited Kodiak and Woody Island "frequently". He also owned a home in Kodiak which he rented to others. When in Kodiak, he would sleep on his boat.

He stated that he would build a home on Woody Island if not for the likelihood of vandalism. He lamented the fact that no one was living there to discourage vandals. (Exs. BIA-2B, p. 119; L-DOC-385, p. 7,014; S-6J, pp. 3-9, 11-12, 16, 18-20, 22-29; Armstrong Depo., pp. 41, 46, 57-58, 114; Tr. 243-44, 265, 303, 467, 1008-09, 1683-85).

Charles did not live on Woody Island after 1961. The frequency of his visits to Woody Island during the 1960's and 1970 is unclear. He never stayed more than a week or two at a time. A significant portion of his time at Woody Island was spent outside the alleged Village and his ties or connections were not to the alleged Village but to the island generally, particularly the east side. He neither owned nor maintained any structure in the alleged Village. He was not a permanent resident of the alleged Village on April 1, 1970.

Nor can he be considered an enrollee who lived for a period of time in the alleged Village in 1970, as he is not listed as an enrollee of the alleged Village on the certified Native Roll.

86. George Hansen (res: 1970)

He was born on March 19, 1952. He is enrolled to Woody Island. He listed Woody Island as his permanent residence on April 1, 1970, but listed Kodiak as the place where he